

**From:** David Godshall  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

As a home computer user, computer professional, and computer enthusiast, and with no financial interest in any of the companies associated with the case, and with only a personal desire to see a proper competitive atmosphere within the computer industry as a whole and a fair deal for the general public, I wish to affirm the antitrust proceedings undertaken in the case of USA v. Microsoft Corporation, Civil Action No. 98-1232 (CKK), wherein Microsoft was found to be a monopoly and having violated portions of the Sherman antitrust law. I have read the November 2001 settlement proposed by the US Department of Justice and nine of the plaintiff states and do not believe the proposed settlement is in the public interest. I am no lawyer, but in spite of that I can see and will highlight a number of the more serious problems I perceive with the current settlement.

1. Within the settlement document (Section III, A-B) is the terminology "Covered OEM", which the Definitions section reveals to be the 20 largest Original Equipment Manufacturers. Are not the smaller companies as least as deserving of protection from predatory practices and pricing discrimination as the larger companies, if not more so?
2. Section III, A, 2, prohibits Microsoft from retaliating against an OEM that ships a Personal Computer with a Windows Operating System in addition to competing operating systems, but says nothing about an OEM shipping a computer with a single non-Windows operating system. As such, OEMs which sell some computers with Windows and some computers with a single competing operating system are open targets for retaliation. Microsoft should have no say in what operating system or systems an OEM includes with any of their computers except in that they get proper payment for each copy of their own operating system actually sold.
3. Section III, C, 1, while initially seeming to disallow such activity, in reality specifically allows Microsoft to dictate in certain circumstances what icons an OEM may or may not place on the desktop or start menu. I contend that the OEM must have the right in all circumstances to include or exclude whatever icons (or for that matter, whatever programs) their customers request, thus allowing healthy competition and differentiation between OEMs, with the general public benefiting by being able to select the OEM that bests accommodates their needs and desires.
4. The Technical Committee, as described in Section IV, B, is supposed to be comprised of three technical persons not affiliated with Microsoft. Allowing Microsoft to select one of those people, and

furthermore allowing them to influence the selection of the third person, seems to me to be giving Microsoft too much influence over the selection of this committee and too much possibility of bias in favor of Microsoft. Furthermore, the stipulation in Section IV, D, 4, d. that nothing the TC does is admissible in court makes enforcement of the entire settlement appear very problematic.

5. Microsoft has full discretion in deciding what constitutes a "Windows Operating System Product" (Section VI, U) and what code goes into it. This is totally unacceptable as it leaves Microsoft free to simply define that a non-operating system component is part of the "Windows Operating System Product" and such code is completely unaffected by this settlement, regardless of how many competing or future non-Microsoft products such an action destroys. The moment Microsoft learns or believes a company is in development on a new product, they would have the complete freedom to write code, regardless of quality, functionality, or user interest, define it as part of the "Windows Operating System Product", and thereby destroy the competition before it has a chance to even begin. I believe an independent entity needs to define what is essential in an "Operating System Product" and everything else must be made user/OEM optional and completely removable.

In addition to the specific shortcomings listed above, I believe it to be entirely too lax on Microsoft. Microsoft was found in a court of law and on appeal to be a monopoly, and furthermore to have abused their monopoly position. This settlement contains no punitive measures for those past offenses, but worse yet it contains little to effectively curb current future predatory behavior. What is intended to contain such behavior is full of "except for" terminology that dilutes the effects of the statements, and when Microsoft is found to have violated sections of the settlement, it appears difficult to enforce such violations. Microsoft has a history of violating court orders and a more effective way to prevent that must be found.

Finally, it does not appear to me that the settlement effectively addresses Microsoft's growing practices of tying products into their operating system in such a way that the user no longer has an option to keep or remove such product, and in fact appears to specifically legalize it (Section VI, U). The most visible example, and one that figured prominently in the proceedings, was integrating Internet Explorer into Windows 98 such that the user can not remove it short of using third-party software (for example, 98lite) or difficult manual changes. Internet Explorer used to be a separate Middleware product in Windows 95, and Microsoft was ordered in court to stop requiring OEMs to bundle it. Rather than respecting the intent and spirit of the court order, however, they attempted legal trickery by integrating it into the operating system such that it was no longer be considered bundling. By doing so, in addition to continuing to use their monopoly position to gain a monopoly in a different area (which they have by now largely

succeeded in doing), they have stripped users of their choice of installing or removing Microsoft's web browser. With Windows XP Microsoft has continued and expanded this practice, making a lot of other formerly optional components into non-removable parts of the operating system, thus further reducing the general public's choices, and the OEM's ability to give the general public those choices, and effectively destroying the ability for competitors to compete on an even playing field. The end user, and the OEMs on their behalf, must be allowed and given the tools to do more than simply disable or hide all Microsoft Middleware Products, they must also be allowed and given the tools to completely remove (uninstall) them, allowing them to free up the disk space and other resources that the Microsoft Middleware Products might otherwise be consuming.

While this settlement is a good start, after all the work that has gone into this lawsuit the computer industry and the general public deserve better protection from Microsoft's predatory actions than this settlement provides, and I ask that the court to either reject the settlement in its current form and require that the parties come up with a settlement that better fits the offenses and which can be genuinely expected to prevent them from reoccurring, or rework the current settlement to remove existing loopholes and give the user and OEMs complete control over the choice to install or not install all Microsoft products that are not essential to operating system functions.

Thank you.

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